

MOBIL EXPLORATION & PRODUCING U.S. INC.
(ON RECONSIDERATION)

IBLA 98-276R

Decided May 4, 1999

Motion to Reinstate Mobil Exploration & Producing U.S. Inc., IBLA 98-276.

Motion to reinstate appeal denied.

1. Administrative Procedure: Generally--Administrative Procedure: Standing--Appeals: Generally--Rules of Practice: Appeals: Standing to Appeal

When the Board of Land Appeals vacates an agency decision and remands the matter to the agency issuing the decision on appeal in response to an unopposed motion to remand filed by the agency, the decision on appeal is annulled, canceled, and rescinded, and the appellant no longer has a basis to sustain an appeal of the vacated decision to the Board.

APPEARANCES: Deborah Bagn Haglund, Esq., Dallas, Texas, for Mobil Exploration & Producing U.S. Inc.; Howard W. Chalker, Esq., and Geoffrey Heath, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On March 5, 1999, Mobil Exploration & Producing U.S. Inc. (Mobil), filed a "Motion to Reinstate Appeal and for Expedited Consideration," asking the Board to reinstate the above-captioned appeal.

In response to a motion filed by the Minerals Management Service (MMS), this Board issued an order, dated December 22, 1998, vacating a February 23, 1998, decision of the Associate Director for Policy and Management Improvement, MMS, and the underlying December 5, 1995, order issued by the Valuation and Standards Division, MMS, and remanded the matter to MMS for further consideration. Mobil did not oppose that motion. See Mobil's Motion to Reinstate at 1.

On February 2, 1999, the Area Supervisor for the Dallas Compliance Division, MMS, issued an order directing Mobil to pay royalties on the undervaluation of gas produced and to perform a restructured accounting. In support of its motion to reinstate, Mobil asserts that this February 2, 1999, MMS order embraces the exact same requirements as were set forth

in the December 5, 1995, order and represents nothing more than a thinly-veiled reinstatement of the former order. Mobil argues that its challenge of the requirements at issue was pending when the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 was enacted on August 13, 1996, and MMS is merely attempting to circumvent the 33-month statutory deadline set to expire on June 14, 1999 (33 months plus the period the deadline was extended). Mobil states that it did not oppose MMS' motion to remand because MMS represented that it intended to withdraw the challenged order. In its answer, MMS contends that the legal issues addressed by the two orders are very different, with the first involving reporting and the second involving valuation. Moreover, it argues that, in the absence of a decision by the Director, the Board has no jurisdiction over this matter.

[1] A decision by the Board is final for the Department. 43 C.F.R. § 4.1(b)(3). However, under 43 C.F.R. § 4.403, we may reconsider our decision "in extraordinary circumstances for sufficient reason," provided a petition for reconsideration is "filed within 60 days after the date of a decision." As Mobil's motion was not filed within the prescribed period, i.e., on or before February 20, 1999, we are without authority to consider it as a timely-filed petition for reconsideration and therefore may not regain jurisdiction over the matter under that process.

In our December 22, 1998, order, we unequivocally "vacated" the February 23, 1998, decision of the Associate Director. To "vacate" means to annul, cancel, or rescind; as applied to a judgment, it is not synonymous with "suspend." Black's Dictionary of Law 1388 (5th ed. 1979).

The jurisdiction of the Board to consider MMS actions is based on 30 C.F.R. § 290.7, which provides that "[a]ny party adversely affected by a final decision of the Director, Minerals Management Service, * * * shall have a right of appeal to the Board of Land Appeals." The February 23, 1998, decision of the Associate Director for Policy and Management Improvement, MMS, and the underlying December 5, 1995, order issued by the Valuation and Standards Division, MMS, have been voided in response to the unopposed MMS motion to remand the case to MMS.

Notwithstanding the untimeliness of the Mobil motion, we find that Mobil is no longer "adversely affected" by the December 5, 1995, MMS decision or the February 23, 1998, decision of the Associate Director for Policy and Management Improvement, and has no basis to sustain an appeal of those decisions to this Board. In addition, assuming Mobil's motion for reconsideration could be considered an appeal of the February 2, 1999, MMS order, it is premature as there has been no decision by the Director, MMS, on review of the February 2, 1999, decision issued by the Area Supervisor for the Dallas Compliance Division.

This Board is without jurisdiction to grant Mobil's motion. On remand, MMS did not renew the requirement to report transportation costs set out in its December 5, 1995, order. Rather, in its February 2, 1999, order MMS directed Mobil to pay royalties on the gross proceeds accruing to

Mobil. There being no timely appeal to this Board, it is not within our authority to consider whether these are the same issues. The February 2, 1999, order represents a new decision, and a challenge of that decision is governed by the regulations at 30 C.F.R. Part 290, which require an appeal to the Director, MMS.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Mobil's motion to reinstate the appeal in IBLA 98-276 vacated by order dated December 22, 1998, is denied.

R.W. Mullen
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge